

A bill for an act

relating to human services; requiring that the state perform family day care background checks; allowing access to criminal history data; amending Minnesota Statutes 2008, sections 245A.10, subdivision 2; 245A.16, subdivisions 1, 3; 245C.04, subdivision 1; 245C.05, subdivisions 2, 2a, 4, 7; 245C.08, subdivision 2; 245C.10, by adding a subdivision; 245C.17, by adding a subdivision; 245C.21, subdivision 1a; 245C.23, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 299C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 245A.10, subdivision 2, is amended to read:

Subd. 2. **County fees for background studies and licensing inspections.** (a) For purposes of family and group family child care licensing under this chapter, a county agency may charge a fee to an applicant or license holder ~~to recover the actual cost of background studies, but in any case not to exceed \$100 annually. A county agency may also charge a license fee to an applicant or license holder not to exceed \$50 for a one-year license or \$100 for a two-year license.~~

(b) A county agency may charge a fee to a legal nonlicensed child care provider or applicant for authorization to recover the actual cost of background studies completed under section 119B.125, but in any case not to exceed \$100 annually.

(c) Counties may elect to reduce or waive the fees in paragraph (a) or (b):

(1) in cases of financial hardship;

(2) if the county has a shortage of providers in the county's area;

(3) for new providers; or

(4) for providers who have attained at least 16 hours of training before seeking initial licensure.

(d) Counties may allow providers to pay the applicant fees in paragraph (a) or (b) on an installment basis for up to one year. If the provider is receiving child care assistance payments from the state, the provider may have the fees under paragraph (a) or (b) deducted from the child care assistance payments for up to one year and the state shall reimburse the county for the county fees collected in this manner.

(e) For purposes of adult foster care and child foster care licensing under this chapter, a county agency may charge a fee to a corporate applicant or corporate license holder to recover the actual cost of background studies. A county agency may also charge a fee to a corporate applicant or corporate license holder to recover the actual cost of licensing inspections, not to exceed \$500 annually.

(f) Counties may elect to reduce or waive the fees in paragraph (e) under the following circumstances:

- (1) in cases of financial hardship;
- (2) if the county has a shortage of providers in the county's area; or
- (3) for new providers.

Sec. 2. Minnesota Statutes 2008, section 245A.16, subdivision 1, is amended to read:

Subdivision 1. **Delegation of authority to agencies.** (a) County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 245A.04 and background studies for adult foster care, and family adult day services, ~~and family child care~~, under chapter 245C; to recommend denial of applicants under section 245A.05; to issue correction orders, to issue variances, and recommend a conditional license under section 245A.06, or to recommend suspending or revoking a license or issuing a fine under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this section. The following variances are excluded from the delegation of variance authority and may be issued only by the commissioner:

- (1) dual licensure of family child care and child foster care, dual licensure of child and adult foster care, and adult foster care and family child care;
- (2) adult foster care maximum capacity;
- (3) adult foster care minimum age requirement;
- (4) child foster care maximum age requirement;
- (5) variances regarding disqualified individuals except that county agencies may issue variances under section 245C.30 regarding disqualified individuals when the county is responsible for conducting a consolidated reconsideration according to sections 245C.25

and 245C.27, subdivision 2, clauses (a) and (b), of a county maltreatment determination and a disqualification based on serious or recurring maltreatment; and

(6) the required presence of a caregiver in the adult foster care residence during normal sleeping hours.

(b) County agencies must report information about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision 2, paragraphs (a) and (b), and variances granted under paragraph (a), clause (5), to the commissioner at least monthly in a format prescribed by the commissioner.

(c) For family day care programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

(d) For family adult day services programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

(e) A license issued under this section may be issued for up to two years.

Sec. 3. Minnesota Statutes 2008, section 245A.16, subdivision 3, is amended to read:

Subd. 3. **Recommendations to commissioner.** The county or private agency shall not make recommendations to the commissioner regarding licensure without first conducting an inspection, and for adult foster care, and family adult day services, ~~and family child care~~, a background study of the applicant under chapter 245C. The county or private agency must forward its recommendation to the commissioner regarding the appropriate licensing action within 20 working days of receipt of a completed application.

Sec. 4. Minnesota Statutes 2008, section 245C.04, subdivision 1, is amended to read:

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at least upon application for initial license for all license types.

(b) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at reapplication for a license for adult foster care, and family adult day services, ~~and family child care~~.

(c) The commissioner is not required to conduct a study of an individual at the time of reapplication for a license if the individual's background study was completed by the commissioner of human services for an adult foster care license holder that is also:

(1) registered under chapter 144D; or

(2) licensed to provide home and community-based services to people with disabilities at the foster care location and the license holder does not reside in the foster care residence; and

(3) the following conditions are met:

(i) a study of the individual was conducted either at the time of initial licensure or when the individual became affiliated with the license holder;

(ii) the individual has been continuously affiliated with the license holder since the last study was conducted; and

(iii) the last study of the individual was conducted on or after October 1, 1995.

(d) From July 1, 2007, to June 30, 2009, the commissioner of human services shall conduct a study of an individual required to be studied under section 245C.03, at the time of reapplication for a child foster care license. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b), and 5, paragraphs (a) and (b). The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, paragraph (a), clauses (1) to (5), 3, and 4.

(e) The commissioner of human services shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with a child foster care license holder. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1 and 5. The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, 3, and 4.

(f) From January 1, 2010, to December 31, 2012, the commissioner of human services shall conduct a study of an individual required to be studied under section 245C.03 at the time of reapplication for a family child care license. The license holder shall collect the information required under section 245C.05, subdivision 1, and forward the information to the county agency using the commissioner's online system. The county agency shall verify the information and forward the information to the commissioner using the commissioner's online system. The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, paragraph (a), clauses (1) to (5), 3, and 4.

(g) The commissioner of human services shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with a family child care license holder. The license holder shall collect the information required under section 245C.05, subdivision 1, and forward the information to the county agency using the commissioner's online system. The county agency shall verify the information and forward it to the commissioner using the

commissioner's online system. The background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, paragraph (a), 3, and 4.

~~(f)~~ (h) Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study forms to the commissioner before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

~~(g)~~ (i) For purposes of this section, a physician licensed under chapter 147 is considered to be continuously affiliated upon the license holder's receipt from the commissioner of health or human services of the physician's background study results.

Sec. 5. Minnesota Statutes 2008, section 245C.05, subdivision 2, is amended to read:

Subd. 2. **Applicant, license holder, or other entity.** (a) The applicant, license holder, or other entities as provided in this chapter shall provide the information collected under subdivision 1 about an individual who is the subject of the background study on forms or in a format prescribed by the commissioner.

(b) For background studies related to family child care, the applicant or license holder shall collect the information under subdivision 1 and forward it to the county agency using the commissioner's online system.

Sec. 6. Minnesota Statutes 2008, section 245C.05, subdivision 2a, is amended to read:

Subd. 2a. **County or private agency.** (a) For background studies related to child foster care, county and private agencies must collect the information under subdivision 1 and forward it to the commissioner.

(b) For background studies related to family child care, the county agency shall verify the information received from the applicant or license holder under subdivision 1 and forward it to the commissioner using the commissioner's online system.

Sec. 7. Minnesota Statutes 2008, section 245C.05, subdivision 4, is amended to read:

Subd. 4. **Electronic transmission.** For background studies conducted by the Department of Human Services, the commissioner shall implement a system for the electronic transmission of:

- (1) background study information to the commissioner;
- (2) background study results to the license holder; ~~and~~
- (3) background study results to county and private agencies for background studies conducted by the commissioner for child foster care; and

6.1 (4) background study results to county agencies for background studies conducted
6.2 by the commissioner for family child care.

6.3 Sec. 8. Minnesota Statutes 2008, section 245C.05, subdivision 7, is amended to read:

6.4 Subd. 7. **Probation officer and corrections agent.** (a) A probation officer or
6.5 corrections agent shall notify the commissioner of an individual's conviction if the
6.6 individual is:

6.7 (1) affiliated with a program or facility regulated by the Department of Human
6.8 Services or Department of Health, a facility serving children or youth licensed by the
6.9 Department of Corrections, or any type of home care agency or provider of personal care
6.10 assistance services; and

6.11 (2) convicted of a crime constituting a disqualification under section 245C.14.

6.12 (b) For the purpose of this subdivision, "conviction" has the meaning given it
6.13 in section 609.02, subdivision 5.

6.14 (c) The commissioner, in consultation with the commissioner of corrections, shall
6.15 develop forms and information necessary to implement this subdivision and shall provide
6.16 the forms and information to the commissioner of corrections for distribution to local
6.17 probation officers and corrections agents.

6.18 (d) The commissioner shall inform individuals subject to a background study that
6.19 criminal convictions for disqualifying crimes will be reported to the commissioner by the
6.20 corrections system.

6.21 (e) A probation officer, corrections agent, or corrections agency is not civilly or
6.22 criminally liable for disclosing or failing to disclose the information required by this
6.23 subdivision.

6.24 (f) Upon receipt of disqualifying information, the commissioner shall provide the
6.25 notice required under section 245C.17, as appropriate, to agencies on record as having
6.26 initiated a background study or making a request for documentation of the background
6.27 study status of the individual.

6.28 ~~(g) This subdivision does not apply to family child care programs.~~

6.29 Sec. 9. Minnesota Statutes 2008, section 245C.08, subdivision 2, is amended to read:

6.30 Subd. 2. **Background studies conducted by a county agency.** (a) For a background
6.31 study conducted by a county agency for adult foster care, and family adult day services,
6.32 ~~and family child care services~~, the commissioner shall review:

6.33 (1) information from the county agency's record of substantiated maltreatment
6.34 of adults and the maltreatment of minors;

(2) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, clauses (2), (5), and (6); and

(3) information from the Bureau of Criminal Apprehension.

(b) If the individual has resided in the county for less than five years, the study shall include the records specified under paragraph (a) for the previous county or counties of residence for the past five years.

(c) Notwithstanding expungement by a court, the county agency may consider information obtained under paragraph (a), clause (3), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

Sec. 10. Minnesota Statutes 2008, section 245C.10, is amended by adding a subdivision to read:

Subd. 5. **Family child care services.** The commissioner shall recover the cost of background studies required under section 245C.03, subdivision 1, for the purposes of family child care licensing, through a fee of no more than \$20 per study charged to the subject of the background study. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Sec. 11. Minnesota Statutes 2008, section 245C.17, is amended by adding a subdivision to read:

Subd. 6. **Notice to county agency.** For studies on individuals related to a license to provide family child care, the commissioner shall also provide a notice of the background study results to the county agency that initiated the background study.

Sec. 12. Minnesota Statutes 2008, section 245C.21, subdivision 1a, is amended to read:

Subd. 1a. **Submission of reconsideration request to county or private agency.**

(a) For disqualifications related to studies conducted by county agencies for adult foster care and family adult day services, and for disqualifications related to studies conducted by the commissioner for child foster care and family child care, the individual shall submit the request for reconsideration to the county ~~or private~~ agency that initiated the background study.

(b) A reconsideration request shall be submitted within 30 days of the individual's receipt of the disqualification notice or the time frames specified in subdivision 2, whichever time frame is shorter.

(c) The county or private agency shall forward the individual's request for reconsideration and provide the commissioner with a recommendation whether to set aside the individual's disqualification.

(d) In addition to the requirements in paragraphs (a) to (c), for disqualifications related to studies conducted by the commissioner for child foster care, the individual shall submit the request for reconsideration to the private agency that initiated the background study.

Sec. 13. Minnesota Statutes 2008, section 245C.23, subdivision 2, is amended to read:

Subd. 2. **Commissioner's notice of disqualification that is not set aside.** (a) The commissioner shall notify the license holder of the disqualification and order the license holder to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder if:

(1) the individual studied does not submit a timely request for reconsideration under section 245C.21;

(2) the individual submits a timely request for reconsideration, but the commissioner does not set aside the disqualification for that license holder under section 245C.22;

(3) an individual who has a right to request a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14 for a disqualification that has not been set aside, does not request a hearing within the specified time; or

(4) an individual submitted a timely request for a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14, but the commissioner does not set aside the disqualification under section 245A.08, subdivision 5, or 256.045.

(b) If the commissioner does not set aside the disqualification under section 245C.22, and the license holder was previously ordered under section 245C.17 to immediately remove the disqualified individual from direct contact with persons receiving services or to ensure that the individual is under continuous, direct supervision when providing direct contact services, the order remains in effect pending the outcome of a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14.

(c) For background studies related to child foster care, the commissioner shall also notify the county or private agency that initiated the study of the results of the reconsideration.

(d) For background studies related to family child care, the commissioner shall also notify the county that initiated the study of the results of the reconsideration.

9.1 Sec. 14. **[299C.461] INFORMATION AVAILABLE TO DEPARTMENT OF**
9.2 **HUMAN SERVICES.**

9.3 The commissioner of public safety shall develop and make available to the
9.4 commissioner of human services a rap-back capability such that, if the Bureau of Criminal
9.5 Apprehension's criminal history record for an individual on whom the Department
9.6 of Human Services conducted a criminal history check with the Bureau of Criminal
9.7 Apprehension under chapter 245C, subsequently receives additional criminal history
9.8 information, the Department of Public Safety must immediately inform the Department
9.9 of Human Services.